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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/712,812	11/13/2000	Patrick D. Smith	PD05924AMP01	9554

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EXAMINER

BURD, KEVIN MICHAEL

ART UNIT PAPER NUMBER

2631

DATE MAILED: 11/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action SummaryApplication No.
09/712,812Applicant(s)
SMITH ET ALExaminer
Kevin BurdArt Unit
2631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Sep 19, 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

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DETAILED ACTION

1. This office action, in response to the request for reconsideration filed 9/19/2002, is a final office action.

Response to Arguments

2. Clarification is still requested concerning the oath. Applicant discloses the instant application is a continuation in part of two US applications. There is no mention of claimed priority in the declaration. Clarification is requested if Applicant is claiming priority on these applications.
3. Applicant's arguments filed 9/19/2002 have been fully considered but they are not persuasive.

Applicant states Saranka does not disclose each of a received quality of service estimations, for a plurality of communication mediums defined between one of a plurality of transmitters and a common receiving point of the network. Saranka discloses estimating quality of service between a transmitter and a receiver. If one path's quality is not acceptable, the data is re-routed to a different path. Each of these paths are between the transmitter and receiver.

Applicant states Saranka fails to teach that each medium is conveyed over at least one shared physical communications path and one non-shared communications

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path. As stated in the previous rejections, The network will comprise numerous connections with transceivers which are shared and not shared by other data transmissions at any given time.

Applicant states Saranka fails to teach the estimations are compared to localize a quality of service estimation to a likely physical path. The service estimations are made to avoid congestions and the best path is chosen (column 3, lines 42-47).

For these reasons and the reasons stated in the previous office action, the rejections of the claims are maintained.

Oath/Declaration

4. Applicant discloses the instant application is a continuation in part of two US applications. There is no mention of claimed priority in the declaration. Clarification is requested if Applicant is claiming priority on these applications.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if

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the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-5, 7-9, 11-24, 26, 28 and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Saranka (US 6,314,085).

Regarding claims 1-5, 7-9, 11-24, 26, 28 and 29, Saranka discloses estimating the quality of service for a plurality of connections in a network which are dependent on traffic parameters (column 3, lines 24-41). Based on these estimates, traffic congestion can be avoided and service quality maintained (column 3, lines 11-23). At certain times, traffic congestion can be heavy at points in the network. When this information is known, the network can prevent the congestion by re-routing the data. The received service quality estimate would be compared with a reference value to determine if congestion or an unacceptable quality value is detected. The network will comprise numerous connections with transceivers which are shared and not shared by other data transmissions at any given time.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 6, 10, 25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saranka (US 6,314,085).

Regarding claims 6, 25 and 27, Saranka discloses the estimating method and apparatus described above. Saranka does not disclose the disclosed network is a cable modem communication network. However, it would have been obvious for one of ordinary skill in the art at the time of the invention to use a cable modem network to allow data to be transmitted and received through the network at faster speeds and utilizing higher capacity than a twisted wire pair network.

Regarding claim 10, Saranka discloses the estimating method and apparatus described above, Saranka does not disclose the quality of service messages are received from a memory. It would have been obvious for one of ordinary skill in the art at the time of the invention to use the method of Saranka to store the service estimations in a memory. This would allow a reference of traffic to be established at that point in time the estimate was made. Also, a determination can be made based on this estimation to re-route traffic if necessary.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact Information

Any response to this final action should be mailed to:

Box AF

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:


(703) 872-9314, (for formal communications; please mark "EXPEDITED PROCEDURE" or for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

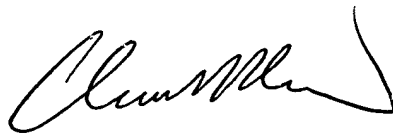
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Burd, whose telephone number is (703) 308-7034. The Examiner can normally be reached on Monday-Thursday from 9:00 AM - 6:00 PM.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3800.



Kevin M. Burd
PATENT EXAMINER
November 7, 2002



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11/12/02